

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814
(916) 324-2255



August 15, 1986

ALL COUNTY LETTER NO: 86-79

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: ASSEMBLY BILL (AB) 2207

REFERENCE:

The purpose of this letter is to inform you of the provisions of Assembly Bill 2207 (Chapter 415, Statutes of 1986). AB 2207 was signed into law by the Governor on July 17, 1986. It was an urgency measure and became effective immediately. A copy of the bill is attached for your information.


This legislation amends the Welfare and Institutions Code (WIC) to provide that Administrative Law Judges, rather than referees, shall conduct hearings for the Department. All persons employed in the Office of Chief Referee as hearing officers prior to the effective date of this legislation shall be deemed to be Administrative Law Judges.

This legislation also adds Section 10966 to the WIC to provide that the Director may delegate powers to adopt final decisions to all Administrative Law Judges within specified ranges in the Department, in certain types of cases deemed appropriate by the Director. This section also provides that if the Director chooses to exercise the authority to delegate powers to adopt final decisions to Administrative Law Judges, the delegation shall be in writing and shall be published by the Department after interested groups have had a reasonable amount of time to review and comment.

A copy of the proposed delegation instrument is attached for your review and comment. All comments should be received by September 15, 1986 and should be sent to:

Jane Foley, Operations Manager
Administrative Adjudications Division
744 P Street, M.S. 19-37
Sacramento, CA 95814

If you have any questions, please contact Jane Foley at (916) 324-2255.


LONNIE M. CARLSON
Chief Administrative
Law Judge

Attachments

D R A F T

DELEGATION OF HEARING AUTHORITY

I hereby appoint the Administrative Law Judges of the Department of Social Services, Administrative Adjudications Division, as the hearing authority to hear and decide cases pursuant to W&IC Section 10950 for the Department of Social Services and the Department of Health Services.

In addition to the powers and authority conferred on all Administrative Law Judges as set forth in W&IC Section 10954, I delegate my power to adopt final decisions to Administrative Law Judges within specified ranges in the department, in all cases except as specified below.

This delegation to Administrative Law Judges shall not include the authority to make final decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to Department policy.

In addition, this delegation shall not include the authority to make final decisions on the following types of cases or issues: (1) Rehearings/Director ordered further hearings/court-ordered hearings/Foster Care rate setting hearings/Child Welfare Service hearings/Intentional Program Violation cases in which the respondent does not appear or a penalty of one year or more is proposed (2) cases in which the claimant or the issue involved is the subject of current litigation (3) cases in which the holding of the decision is based primarily on other than State regulations (4) all cases with issues relating to equitable or collateral estoppel, large overpayment/overissuance issues (over \$4000), large underpayment issues (over \$1000), jurisdictional issues (lack of standing, timeliness, unwillingness to proceed), GAIN issues, RCA/RDP sanction issues in which there is a review of the employment plan, (5) cases in which a county policy conflicts with State regulations or there are conflicts between State regulations, and (6) cases which are novel or unusual, cases of first impression, or cases sensitive or controversial in nature, such as alleged discourtesy or harrassment issues, or alleged paternity or the validity of marriage issues.

For cases heard on behalf of the Department of Health Services, in addition to the limitation set forth in (6) above this delegation will not include the authority to render final decisions in the following areas: (1) all cases with issues relating to level of care, drug restriction, other real property of LTC beneficiaries, Lynch v. Rank or other lawsuits in which the Department of Health Services is or has been a party, and (2) all cases involving the scope of benefits and (3) cases involving determinations of disability.

This delegation of authority is made pursuant to W&IC Section 10966. Decisions rendered by Administrative Law Judges under the authority of this delegation shall be treated, for all purposes, as the decision of the director. Decisions rendered by Administrative Law Judges pursuant to the provisions of this delegation shall be considered final upon signing and dating by the Administrative Law Judge. This delegation of authority is to be applied to all decisions of Administrative Law Judges signed after October 1, 1986.

Date: _____

Linda McMahon, Director
Department of Social Services

Date: _____

Kenneth Kizer, Director
Department of Health Services

Assembly Bill No. 2207

CHAPTER 415

An act to amend Sections 10556, 10950, 10952.5, 10953, 10954, 10957, 10958, 10959, 10960, 10961, and 12700 of, to add Sections 10953.5, 10958.1, 10966, and 10967 to, and to repeal Section 15060 of, the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 17, 1986. Filed with
Secretary of State July 17, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2207, Konnyu. Public social services.

Existing law provides that every applicant for or recipient of public social services has a right to a fair hearing in order to appeal an action of a county concerning eligibility or the amount of services due the applicant or recipient.

Under existing law, the hearings are conducted by the director of the appropriate department, the administrative adviser of the department, or by a referee.

This bill would delete the authority of the administrative adviser to the department to conduct a hearing and would provide that administrative law judges, rather than referees, may conduct the hearings, with the exception of hearings conducted by the director of the appropriate department. The bill would specify the qualifications for administrative law judges appointed to the State Department of Social Services and the State Department of Health Services.

The bill would authorize the director of the appropriate department to delegate the authority to adopt final decisions to administrative law judges, as specified.

This bill would specify that the issues at a hearing shall be limited, as specified, and would require the award of a decision be determined no later than 30 days following the date the hearing decision is received by the county, or 30 days from the date certain additional information is provided to the county for compliance.

Under existing law, if regulations require a county to write a position statement concerning issues in a fair hearing, or a county chooses to do so, it shall provide a copy within a specified period.

This bill would make that requirement applicable to a public or private agency, instead, and would exclude the State Department of Health Services from that requirement.

Under existing law, the amount which may be expended in any fiscal year from the Revolving Loan Fund used to make loans to the aged, blind, or disabled due to blindness to enable them to establish

themselves in business, professions, or gainful employment may not exceed the amount saved by the state as a result of discontinuance of aid due to the earnings of persons during the preceding fiscal year.

This bill would delete that expenditure limitation, thereby resulting in an appropriation.

Existing law authorizes the State Department of Social Services to establish a Disability Evaluation Revolving Fund, by withdrawing funds from the Federal Trust Fund, for the purpose of reimbursing medical service providers for certain costs incurred by the department for specified disability determination functions.

This bill would repeal that authorization.

The bill would authorize the State Department of Social Services to transfer funds appropriated to the department in the 1986-87 fiscal year Budget Act for local assistance to support uses, thereby resulting in an appropriation.

The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 10556 of the Welfare and Institutions Code is amended to read:

10556. The chief administrative law judge of the department shall be an attorney, and shall otherwise meet such qualifications as may be prescribed by the State Personnel Board. The director shall appoint the chief administrative law judge. The office of the chief administrative law judge shall not be made a part of any other division, office, or subdivision of the department. The chief administrative law judge shall be directly responsible to the director.

SEC. 2. Section 10950 of the Welfare and Institutions Code is amended to read:

10950. If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of public social services, if his application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with such refusal, he shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a fair hearing.

Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and

state law.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct fair hearings in order to secure approval of a state plan under the provisions of applicable federal law.

The State Director of Health Services may contract with the State Department of Social Services for the provisions of fair hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Chapter 3 (commencing with Section 12000) of Part 3 of this division, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6.

SEC. 2.5. Section 10952.5 of the Welfare and Institutions Code is amended to read:

10952.5. If regulations require a public or private agency to write a position statement concerning the issues in question in a fair hearing, or if the public or private agency chooses to develop such a statement, not less than two working days prior to the date of a hearing provided for pursuant to this chapter, the public or private agency shall make available to the applicant for, or recipient of, public social services requesting a fair hearing, a copy of the public or private agency's position statement on the forthcoming hearing. The public or private agency shall make the copy available to the applicant or recipient at the county welfare department. A public or private agency shall be required to comply with the provisions of this section only if the public or private agency has received a 10-day prior notice of the date and time of the scheduled hearing.

If the public or private agency does not make the position statement available not less than two working days prior to the hearing or if the public or private agency decides to modify the position statement, the hearing shall be postponed upon the request of the applicant or recipient, provided an applicant or recipient agrees to waive the right to obtain a decision on the hearing within the deadline that would otherwise be applicable under regulations. A postponement for reason of the public or private agency not making the position statement available within not less than two working days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing.

For purposes of this section "public or private agency" shall not include the State Department of Health Services.

SEC. 3. Section 10953 of the Welfare and Institutions Code is amended to read:

10953. A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by himself or herself. However, the director may contract with the Office of Administrative Hearings to conduct hearings.

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.

SEC. 4. Section 10953.5 is added to the Welfare and Institutions Code, to read:

10953.5. (a) The director has authority to appoint the department's administrative law judges as provided in Section 10555.

(b) Each administrative law judge shall have been admitted to practice law in this state and shall possess any other qualifications prescribed by the State Personnel Board. All persons in the office of the chief referee employed as hearing officers by the department prior to the effective date of this section shall be deemed to be administrative law judges.

SEC. 5. Section 10954 of the Welfare and Institutions Code is amended to read:

10954. The director or administrative law judge conducting the hearing, shall have all of the powers and authority conferred upon the head of a department in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 10957 of the Welfare and Institutions Code is amended to read:

10957. The person conducting the hearing, upon good cause shown, may continue the hearing for a period of not to exceed 30 days. When the refusal of a county to accept a signed application for aid or services is an issue, the director may require the county to accept the application, and may continue the case until the results of the investigation have been reported to him or her. In any such case in which aid is awarded by the director or his or her designee, the payments shall commence at the time indicated by the director or his or her designee.

SEC. 7. Section 10958 of the Welfare and Institutions Code is amended to read:

10958. If the hearing is conducted by an administrative law judge, he or she shall prepare a fair, impartial, and independent proposed decision, in writing and in such format that it may be adopted as the director's decision and, after approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days

after the conclusion of the hearing, with the director.

SEC. 7.5. Section 10958.1 is added to the Welfare and Institutions Code, to read:

10958.1. The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions.

SEC. 8. Section 10959 of the Welfare and Institutions Code is amended to read:

10959. Within 30 days after the department has received a copy of the administrative law judge's proposed decision, the director may adopt the decision in its entirety; decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence; or order a further hearing to be conducted by himself or herself, or another administrative law judge on behalf of the director. Failure of the director to adopt the proposed decision, decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence or order a further hearing within the 30 days shall be deemed an affirmation of the proposed decision. If the director decides the matter, a copy of his or her decision shall be served on the applicant or recipient and on the affected county, and, if his or her decision differs materially from the proposed decision of the administrative law judge, a copy of that proposed decision shall also be served on the applicant or recipient and on the affected county. If a further hearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.

SEC. 9. Section 10960 of the Welfare and Institutions Code is amended to read:

10960. Within 30 days after receiving the proposed decision of an administrative law judge adopted by the director, a final decision rendered by an administrative law judge or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and such other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no earlier than the fifth nor later than the 15th working day after the receipt of the request. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing. If action is not taken by the director within the time allowed, the request shall be deemed denied.

SEC. 9.5. Section 10961 of the Welfare and Institutions Code is amended to read:

10961. The decision of the director need not specify the amount

of the award to be paid unless the amount of the award is an issue. If the decision is in favor of the applicant or recipient, the county department shall pay to the applicant or recipient, without the necessity of establishing his or her present need, the amount of aid the director finds he or she is entitled to receive pursuant to the director's decision, payment to commence as of the date the person was first entitled thereto, or grant to him or her the services to which he or she is entitled.

The award shall be determined no later than 30 days following the date that the hearing decision is received by the county, or 30 days from the date the additional information needed for compliance with the decision is provided to the county. After the award is made, the county and the claimant shall be notified by the department of its determination regarding the county's compliance with the decision.

SEC. 10. Section 10966 is added to the Welfare and Institutions Code, to read:

10966. (a) In addition to any other delegation powers granted to the director under law, the director may delegate his or her powers to adopt final decisions under this chapter to all administrative law judges within specified ranges in the department, in the types of cases deemed appropriate by the director. The authority to adopt final decisions shall not be contingent upon the outcome of the judge's resolution of the case or issue, nor upon the identity of a particular administrative law judge. The defined areas of delegation shall be published by the department after interested groups such as the Coalition of California Welfare Rights Organizations, legal aid societies, and the County Welfare Directors Association have had a reasonable amount of time to review and comment.

(b) Notwithstanding any other provisions of this chapter, decisions rendered by the administrative law judges under the authority of this section shall be treated, for all purposes, as the decision of the director. The affected county, recipient, or applicant has the right to request a rehearing pursuant to Section 10960, and the right to petition for judicial review pursuant to Section 10962.

(c) If the director chooses to exercise the authority to delegate his or her powers to adopt final decisions to administrative law judges, the delegation shall be in writing. Any such delegation instrument shall be a public record available at all times, including the time of hearing, from each administrative law judge to whom that authority has been delegated. The written delegation instrument shall include paragraphs (1) and (2) of the following, and may include paragraph (3) of the following:

(1) It shall specify the administrative law judges that are authorized to render final decisions on his or her behalf, including the effective date of the authorization.

(2) It shall specify the types of cases or issues that are subject to his or her delegation of final authority.

(3) It may include any other implementation instructions which

he or she determines are necessary for the effective implementation of this section.

(d) Decisions rendered by administrative law judges pursuant to the provisions of this section shall be fair, impartial, independent, in writing, and in the format prescribed by the Chief Administrative Law Judge.

SEC. 10.5. Section 10967 is added to the Welfare and Institutions Code, to read:

10967. At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the administrative law judge determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue or issues or the case shall be dismissed. If the administrative law judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending.

SEC. 11. Section 12700 of the Welfare and Institutions Code is amended to read:

12700. There is in the State Treasury a permanent revolving fund, in the amount of one hundred fifty thousand dollars (\$150,000), to be known as the Revolving Loan Fund, and to be administered by the department. The fund shall be used to make loans to recipients of aid to the aged, blind, or disabled due to blindness under Chapter 3 (commencing with Section 12000), at a rate of interest not to exceed 3 percent per year, to enable those recipients to establish themselves in businesses, professions, or other gainful employment, including, but not limited to self-employment or to assist those already engaged in such endeavors. No loan in excess of fifteen thousand dollars (\$15,000) shall be made to any individual under this section.

The department shall establish through the Office of Services to the Blind the terms and conditions of loans made pursuant to this section, and shall prescribe the procedure to be followed in making application for such loans. All funds received in repayment of loans made pursuant to this section shall be deposited in the Revolving Loan Fund, and shall be available for the making of additional loans as provided in this section.

The collection procedures appropriate to the purposes and objectives of the loan fund shall be prescribed by the Office of Services to the Blind.

SEC. 12. Section 15060 of the Welfare and Institutions Code is repealed.

SEC. 13. Savings due to reductions in aid paid pending as a result of this act may be used to fund part of the cost of reallocating hearing officers to administrative law judges. For this purpose, the State

Department of Social Services may transfer an amount not to exceed three hundred sixty thousand dollars (\$360,000) for the 1986-87 fiscal year, from the department's local assistance budget contained in Items 5180-101-001 and 5180-101-890 of the Budget Act for the 1986-87 fiscal year, to the department's support budget items contained in 5180-001-001 and 5180-001-890 of the Budget Act for the 1986-87 fiscal year.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

When an application for public social services is denied, or when an existing grant is terminated or reduced, relief may be obtained only by appeal through the administrative hearing process. During this process applicants receive no public assistance and many recipients face reduced or complete termination of benefits. Recent increases in the backlog of appeals have caused critical delays in the timeliness of hearing decisions. In order to permit immediate improvements in the administrative process thereby reducing delays to all needy families applying for and receiving benefits, it is necessary for this act to take immediate effect.

O